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REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-SECOND SESSION

Written statement submitted by the American Association of Jurists, a non-governmental organization in consultative status (Category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[28 December 1990]

1. The American Association of Jurists shares the concern and the views expressed by the Commission on Human Rights in resolution 1990/64. The AAJ regards the Sub-Commission as "a sort of committee of wise men responsible for preparing human rights standards, for considering, in public or in closed session, situations involving violations of human rights and for suggesting ways and means of putting an end to them" (E/CN.4/Sub.2/1990/SR.4), in a completely independent fashion, in other words, without regard for the frame of mind of foreign ministries or governments, and at the same time, acutely sensitive to the outcry from the victims. Yet in practice, the Sub-Commission falls quite short of this ideal picture.

2. Proliferation of studies. Some studies contribute little that is new when compared with earlier studies on the same topic, or they go beyond the actual competence of the Sub-Commission and take up topics within the purview of other specialized bodies. Other studies are initiated without any clearly defined aim. The AAJ considers that studies should have precise objectives, they should not be repetitive, and they should fall within the competence of the Sub-Commission.

3. Methods and organization of work. For some years the Sub-Commission has been discussing its methods and organization of work, but has failed to make any substantial progress. In order to move ahead, account should be taken of many of the proposals contained in the report by the Working Group of the NGO Special Committee on Human Rights, dated 28 November 1990, on the activities of the Commission and the Sub-Commission.

4. Confidential deliberations and voting by secret ballot. In recent years the Sub-Commission has shown a tendency to hold closed meetings and to vote by secret ballot on various issues. The AAJ considers that resorting to confidentiality and a secret ballot is harmful to the credibility of the Sub-Commission, is an impediment to the transparency needed in its deliberations, and shields the members from public scrutiny. Indeed, publicizing its deliberations would unquestionably deter violations of human rights and play an important instructive role for peoples throughout the world.

5. Independence of the experts. The merit of the argument that voting by secret ballot obviates government pressure, thereby strengthening the experts' independence, is that it highlights the real nature of the problem of the independence of the experts. As can be seen from the debates (E/CN.4/Sub.2/1990/SR.23), some members fear that an expert who publicly acts in an independent fashion may "lose his post" or that his vote may have "consequences for his career". An expert whose behaviour displeases the government of his country can "lose his post" if he is a government official. In other words, an expert may be open to pressure from his Government if he is an official of the administration. The answer, in order to preserve the independence of the experts, is not to vote by secret ballot but to have experts who are not officials of the administration of their country, i.e., who are not dependent on their Governments. If the expressions used by some members in the Sub-Commission's discussions, such as "lose his post" or "consequences for an expert's career" mean that, as members of the Sub-Commission, they may not be re-elected because their Government will not submit their candidature, two comments are called for:

(a) Status as a member of the Sub-Commission does not mean a "career" or a "post". It is something of great responsibility, temporary by its very nature, and there is no reason for it to have anything whatsoever to do with an administrative career or with the civil service;

(b) If a really competent and independent member of the Sub-Commission displeases the Government of his country, to such an extent that the Government will not present him for re-election, there is nothing to prevent another country or group of countries from submitting his candidature if they deem it important for him to carry on as a member of the Sub-Commission. Again, in the present international situation, independent public behaviour by experts, who enjoy the protection and immediate solidarity of the Sub-Commission and the whole of the United Nations system, cannot conceivably jeopardize their privileges and immunities or personal safety, as has been the case in the past. In any event, it should be pointed out that the vulnerability, if any, of an expert who publicly expresses his opinions is infinitesimal when compared with the dangers constantly besetting thousands of persons who defend human rights throughout the world, who anonymously risk their freedom and their lives, which many of them lose, without enjoying any kind of protection.

6. Lastly, the American Association of Jurists suggests that the Commission on Human Rights:

(a) Should maintain the Sub-Commission's two-fold function of standard-setting and considering specific situations of human rights violations;

(b) Should recommend that the Sub-Commission carry out studies, with precise objectives within its sphere of competence, studies which will make genuine contributions to the enforcement and advancement of human rights;

(c) Should recommend that the Sub-Commission continue the dialogue with NGOs in order to improve the organization and methods of work, bearing in mind especially the report of the NGO Working Group mentioned above;

(d) Should not sponsor in the Economic and Social Council any reform of the rules of procedure that would lead to greater use of voting by secret ballot;

(e) Should recommend that the Sub-Commission reduce closed meetings to a minimum;

(f) Should issue a resolution establishing that status as an expert member of the Sub-Commission is incompatible with status as a government official, including the diplomatic service, an exception being made in the case of members of the judiciary, parliament or teachers or researchers;

(g) Should decide that candidatures for membership of the Sub-Commission in the event of such incompatibility will no longer be taken into account.